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CLERK U.S. DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

11	DONNA OSBORNE MCKENZIE,	)	Case No. EDCV 08-00033-VAP
12	Plaintiff,	)	(OPx)
13	v.	)	[Motions filed on January
14	EOG RESOURCES, INC.,	)	18, 2008]
15	MARK B. PAPA, CEO	)	ORDER GRANTING MOTION TO
16	CHAIRMAN OF THE BOARD,	)	TRANSFER VENUE
17	Defendants.	)	

18 The Court has received and considered all papers  
19 filed in support of, and in opposition to, Defendants  
20 Motions to Transfer Venue and to Dismiss. The Motions  
21 are appropriate for resolution without oral argument.  
22 See Fed. R. Civ. P. 78; Local Rule 7-15. For the reasons  
23 set forth below, the Court GRANTS the Motion to Transfer  
24 and declines to rule on the Motion to Dismiss.

26 I. BACKGROUND

27 On December 12, 2007, Plaintiff Donna Osborne  
28 McKenzie, proceeding pro se, filed a Complaint ("Compl.")

1 in the California Superior Court for the County of San  
2 Bernardino, naming as defendants EOG Resources, Inc. and  
3 Mark B. Papa (collectively "Defendants"). The Complaint  
4 asserts a claim for nonpayment of a mineral production  
5 payment pursuant to section 31:212.21-.23 of the  
6 Louisiana Revised Statutes. Defendants removed the case  
7 to this Court on January 11, 2008.

8  
9 On January 18, 2008, Defendant EOG Resources, Inc.  
10 ("EOG") filed a Motion to Transfer Venue to the United  
11 States District Court for the Western District of  
12 Louisiana ("Mot. Transfer") and Defendant Papa filed a  
13 Motion to Dismiss. On February 6, 2007, Plaintiff filed  
14 an Opposition to the Motion to Dismiss. Defendant filed  
15 a Reply in support of both motions on February 15, 2008.  
16 Plaintiff filed an Opposition to the Motion to Transfer  
17 on February 22, 2008.<sup>1</sup>

## 18 19 **II. MOTION TO TRANSFER VENUE**

### 20 **A. Improper Venue**

21 Pursuant to 28 U.S.C. § 1391(a),

22 A civil action wherein jurisdiction is  
23 founded only on diversity of citizenship  
24 may, except as otherwise provided by law,  
25 be brought only in (1) a judicial  
26 district where any defendant resides, if  
27 all defendants reside in the same State,  
28 (2) a judicial district in which a  
substantial part of the events or

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27 <sup>1</sup>The Court reviewed and considered Plaintiff's  
28 untimely-filed Opposition to the Motion to Transfer.

1 omissions giving rise to the claim  
2 occurred, or a substantial part of  
3 property that is the subject of the  
4 action is situated, or (3) a judicial  
5 district in which any defendant is  
subject to personal jurisdiction at the  
time the action is commenced, if there is  
no district in which the action may  
otherwise be brought.

6 For the purposes of venue, a corporate defendant  
7 "resides" "in any judicial district in which it is  
8 subject to personal jurisdiction. . . ." 28 U.S.C. §  
9 1391(c).

10  
11 Here, subject matter jurisdiction over Plaintiff's  
12 Complaint is founded solely on diversity of citizenship.  
13 (See Notice of Removal, filed January 11, 2008 ¶¶ 4-8.)  
14 Defendant Papa resides in Sugar Land, Texas. (Id. Ex. D,  
15 Decl. of Papa in Support of Removal ¶ 1.) Defendant EOG  
16 is deemed to reside, among other places, in Houston  
17 Texas, because its principal place of business is there,  
18 and thus it is subject to personal jurisdiction there.  
19 See Doe v. Unocal Corp., 248 F.3d 915, 923 (9th Cir.  
20 2001) (general personal jurisdiction exists when the  
21 defendant's activities within a state are "substantial,  
22 continuous and systematic.") Thus, pursuant to 28 U.S.C.  
23 § 1391(a)(1), proper venue for this case lies in the  
24 Southern District of Texas.<sup>2</sup>

25  
26 <sup>2</sup> The Court takes judicial notice that both Sugar  
27 Land, Texas and Houston, Texas are situated in the  
28 Southern District of Texas.

1 Venue in the Central District of California cannot be  
2 premised on 28 U.S.C. § 1391(a)(2) because there is no  
3 evidence that a "substantial part of the events or  
4 omissions giving rise to the claim occurred" in this  
5 district. See 28 U.S.C. § 1391(a)(2). On the contrary,  
6 the "property that is the subject of the action is  
7 situated" in Jackson Parish, Louisiana. (Compl. ¶ 2.)  
8 The events and omissions giving rise to Plaintiff's  
9 claim, namely the operation of oil wells and the alleged  
10 failure to respond to Plaintiff's demands for payment,  
11 occurred in Louisiana and Texas. (Id. ¶¶ 2-7.) Thus,  
12 venue would be proper under § 1391(a)(2) in either the  
13 Western District of Louisiana<sup>3</sup> or the Southern District  
14 of Texas.

15  
16 Finally, venue is not proper in the Central District  
17 of California pursuant to 28 U.S.C. § 1391(a)(3), because  
18 there is a "district in which the action may otherwise be  
19 brought." See 28 U.S.C. § 1391(a)(3). As explained  
20 above, venue in this case is proper in the Southern  
21 District of Texas and the Western District of Louisiana.  
22 Accordingly, venue is not proper in the Central District  
23 of California.

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27 <sup>3</sup> The Court takes judicial notice that Jonesboro,  
28 Louisiana the seat of Jackson Parish, Louisiana, is  
situated in the Western District of Louisiana.

1 Defendant EOG argues that venue for this case is laid  
2 properly only in Louisiana, because proper venue in  
3 "cases involving title to real property" lies only where  
4 the subject property is located. (Mot. Transfer at 4.)  
5 Indeed, the cases cited by EOG establish the "local  
6 action rule" under which "a court sitting in one state  
7 cannot adjudicate title to land situated in a different  
8 state."<sup>4</sup> See Hayes v. Gulf Oil Corp., 821 F.2d 285,  
9 290 (5th Cir. 1987) (citing Louisville & N.R.R. v.  
10 Western Union Telegraph Co., 234 U.S. 369 (1914)). A  
11 court in this circuit recently recognized the local  
12 action rule. See Durbin v. National Loan Investors, 2002  
13 WL 31052430, \*1 (N.D. Cal. 2002) (vacated on other  
14 grounds).

15  
16 Courts traditionally apply the local action rule in  
17 cases where title to land is in issue. See, e.g. Hayes,  
18 821 F.2d at 288 (holding that an action to claim title to  
19 an oil and gas lease was "local" specifically because it  
20 was "an action to try title to real property"). Here,  
21 neither party directly contests title to any property.  
22 Cf. Durbin, 2002 WL 31052430, at \*1 & n.4 (holding that  
23 the local action doctrine does not apply because the  
24 plaintiff's claim arose out of a settlement agreement,

25  
26  
27 <sup>4</sup>It is unclear whether the local action doctrine runs  
28 to the jurisdiction or the venue of a court. See Trust  
Co. Bank v. U.S. Gypsum Co. 950 F.2d 1144, 1149 (5th Cir.  
1992)

1 and because the plaintiff did not request an adjudication  
2 of the deed on the plaintiff's property).

3  
4 Courts have also applied the rule, however, in  
5 actions such as trespass that arise from property rights  
6 but which do not directly contest title. See, e.g.  
7 Ellenwood v. Marietta Chair Co., 158 U.S. 105, 107  
8 (1895); Livingston v. Jefferson, 15 F. Cas. 660, 667 (No.  
9 411) (C.C. D.Va. 1811) (dismissing a claim for trespass  
10 on land in Louisiana against former president Thomas  
11 Jefferson). The Durbin court thus concluded that "local  
12 actions are those where the transactions upon which they  
13 are founded could only have occurred in the location  
14 where the real property was situated." Durbin, 2002 WL  
15 31052430, at \*1.

16  
17 The Court need not decide whether the local action  
18 rule applied in this case, because the Court transfers  
19 venue to Louisiana based on other considerations.  
20 Pursuant to 28 U.S.C. § 1406(a), when a plaintiff files a  
21 case in a district where venue is improper, the district  
22 court shall dismiss the case or transfer it to a district  
23 where venue is proper. 28 U.S.C. § 1406(a). As  
24 explained above, venue is improper in the Central  
25 District of California. Venue is proper in the Western  
26 District of Louisiana, however, because the property from  
27 which the dispute arises is located there. See 28 U.S.C.

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1 § 1406(a)(2). Moreover, the case raises questions of  
2 Louisiana law, with which a district court situated in  
3 Louisiana will be more familiar. (See Compl. ¶¶ 5-7  
4 (arguing for damages under Louisiana's Mineral Code).)  
5

6 **IV. CONCLUSION**

7 For the foregoing reasons, the Court GRANTS the  
8 Motion to Transfer. Accordingly, the Court declines to  
9 rule on the Motion to Dismiss. The Court VACATES the  
10 hearing on the Motions to Dismiss and Transfer set for  
11 February 25, 2008. The clerk is directed to forward the  
12 case to the district court in the Western District of  
13 Louisiana.  
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15 Dated: February 25, 2008  
16

*Virginia A. Phillips*  
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VIRGINIA A. PHILLIPS  
United States District Judge  
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